112-737

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 521.

THE FLINT AND PÈRE MARQUETTE RAILROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JUNE 20, 1883.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 I. *Petition.* *Filed January* 20, 1881.

In the Court of Claims. December Term, 1880.

THE FLINT AND PÈRE MARQUETTE RAILROAD COMPANY
versus
THE UNITED STATES. } No. 12404.

To the Honorable Chief Justice and Justices of the Court of Claims

The complainant, your petitioner, "The Flint and Pere Marquette Railroad Company," respectfully represents:

That is a corporation duly incorporated under the laws of the State of Michigan, having its principal office of business at East Saginaw, Michigan.

That it is the successor of the Flint and Pere Marquette Railway Company, a corporation heretofore incorporated and existing under the laws of the State of Michigan.

That from the first day of July, 1875, up to and including the 30th day of June, 1879, the said railway companywas the owner of a certain railroad and its equipments, extending from Monroe, via Flint, to Ludington, in the State of Michigan, a distance of 254,029 miles.

That on and after the first day of July, 1875, aforesaid, the said Flint and Pere Marquette Railway Company regularly transported the United United mails upon its trains over the said road

2 between Monroe and Ludington aforesaid, until and including the 30th day of June, 1879. And on the 11th day of September, 1875, the Postmaster General of the United States, on behalf of the United States, entered into a written contract with the said railway company for the transportation of the said mails over the said railroad, between Monroe and Ludington aforesaid, a duly certified copy of which contract is attached to and made a part of this petition, and marked "Exhibit A."

And your petitioner further represents that the said railway company faithfully kept and performed each and all of the conditions in the said contract to be kept and performed on its part, and did, from the first day of July, 1875, thereafter up to and including the 30th day of June, 1879, faithfully convey the mails upon the said route, in all respects as required by the terms of the said contract. And that during the said time the Postmaster General never discontinued or curtailed the said service, in whole or in part, on the said route, or notified the said company that he desired so to do, or that the public interests, in his judgment, required such discontinuance or curtailment for any cause. And your petitioner avers that the said mail service could not have been discontinued upon the said route without very great injury and embarrassment to the public interest.

And your petitioner further represents that that part of the said railway between Flint and Ludington, a distance of 171,017 miles, received a grant of public lands to aid in its construction, which grant contained conditions to wit: That the said railroad so aided

should carry the mails at such rates as Congress should by law direct; but until Congress should so direct the Postmaster General should fix the rates for such transportation; that the said act of Congress making the said grant was passed in the year 1876.

And your petitioner further represents that the said Post-
3 Office Department claimed the right under the provisions of the act of July 12th, 1876, entitled "An act making appropriations for the service of the Post Office Department," etc., to reduce the compensation of said company for the transportation of the mails under the said contract. That the said railway company protested against such action of the Post Office Department, and claimed that the provisions of the said act did not apply to the transportation of the mails under existing contracts, and the said company have at all times protested against such reduction. Nevertheless the said Post Office Department has reduced the compensation of said company from the amount provided in the said contract from the first day of July, 1876, up to and including the 30th day of June, 1879, at the rate of $4,601.05 per annum, amounting to the sum of $13,803.15; and from the first day of July, 1878, to June 30th, 1879, the said Post Office Department made a further reduction of $591.56; making altogether the sum of $14,394.71.

That the amounts deducted as aforesaid have been, and are, wrongfully withheld from your petitioner, and that there is justly due from the United States, after allowing all just credits and offsets, to your petitioner, as the successor of said company, on account of the transportation of the mails, as aforesaid, under said contract, up to and including the quarter ending on the 30th day of June, 1879, the sum of $14,394.71.

And your petitioner further represents that on the 18th day of August, 1880, by virtue and in pursuance of a decree of the circuit court of the United States for the eastern district of Michigan, in equity, and the proceedings duly had thereunder, the said railroad and its equipments, and all the property, choses in action, and all claims and demands of the said "Flint and Pere Marquette Railway Company" whatsoever, against any person or persons or cor-
poration, and against the State and the United States, were
4 sold and became the property of your petitioner, which sale was afterwards, to wit, on the 21st day of September, 1880, duly confirmed by the said court, as will more fully appear by reference to the records of said court, duly attested copies of so much thereof as may be required your petitioner will produce as this honorable court shall direct.

And your petitioner further represents that there is justly due to your petitioner from the United States, over and above all just credits and offsets, the said sum of fourteen thousand three hundred and ninety-four dollars and seventy-one cents ($14,394.71), and that no sale or assignment of said claim or any part thereof has ever been made by the said railway company, or your petitioner, or any person or persons, except as herein stated. That the same belongs to your petitioner as the successer of the "Flint and Pere Marquette Railway Company." Wherefore your petitioner prays that a judg-

ment may be rendered in its favor against the United States for the said sum.

J. F. FARNESWORTH,
Attorney for Claimant.

STATE OF MICHIGAN, *County of Saginaw,* } *ss:*

Henry C. Potter, of said county and State, being duly sworn, doth depose and say: That he is the treasurer of the said "Flint and Pere Marquette Railroad Company;" that he is acquainted with the statements in the foregoing petition, and that he believes the same to be true.

HENRY C. POTTER.

Sworn and subscribed before me, this 11th day of January, 1881.
ALFRED W. NEWTON,
Notary Public in and for Saginaw County, Michigan.

NOTE.—The P. O. address of the petitioner is E. Saginaw, Mich. That of the plaintiff's attorney is Washington, D. C.

5 UNITED STATES OF AMERICA,
POST OFFICE DEPARTMENT,
WASHINGTON, D. C., *June 22nd*, 1880.

I, D. M. Key, Postmaster General of the United States of America, certify that the annexed is a true copy of the original contracts now on file in this Department.

In testimony whereof, I have hereto set my hand and caused the seal of the Post Office Department to be affixed, at the city of Washington, the day and year above written.

[L. S.]

D. M. KEY,
Postmaster General.

"EXHIBIT A."

UNITED STATES OF AMERICA, *New York City, N. Y.:*

Contract for Railroad Mail Service.

No. 24015. $25,758.04 per annum.

This article of contract, made the 11th day of September, in the year one thousand eight hundred and seventy-five, between the United States of America (acting in this behalf by the Postmaster General) and the Flint and Pere Marquette Railroad Company, by Jesse Hoyt, its president, and Jesse Hoyt and Samuel N. Hoyt, as sureties, witnesseth:

That whereas the said railroad company has been accepted, according to law, as contractor for conveying the mail on route No. 24015, from Monroe, Mich., by Grafton, Carleton, Waltz, Belden, New Boston, Romulus, Wayne, Plymouth, Mead's Mills, Northville, Novi, Wixom, Milford, Highland Station, Clyde, Holly, Stony Run, South Grand Blanc, Grand Blanc, Flint, Mount Morris, Clio, County
6 Line, Birch Run, Blackmar, Bridgeport Centre, East Saginaw, Jay, Smithville (No.), Midland, Averill's Station, Sanford,

No. Bradley, Coleman, Loomis, Clare, Farewell, Sears, Evart, Hersey, Reed City, Chase, Summitville, Mivona, Forman, Baldwin, Welden Creek, Ferryville, and Amber, to Ludington and back, by railroad, 12 times a week, and six additional times a week outward; to Holly 24 times a week, and six additional times a week outward; thence to East Saginaw, and 6 times a week the residue; and on branch from Otter Lake Junction (No.), by Genesee Village, Rogersville, and Otisville, to Otter Lake and back, by railroad, 6 times a week; and on branch from East Saginaw, by Portsmouth, to Bay City and back, by railroad, 24 times a week, and 6 additional times a week outward, or as much oftener as trains may run, by a schedule satisfactory to the Department, at twenty-five thousand seven hundred and fifty-eight and four one-hundredths dollars per year (being at the rate of $96 per mile per annum on main line, $40 per mile per annum on 1st branch, and $60 per mile per annum on 2nd branch) for and during the term beginning July 1st, eighteen hundred and seventy-five, and ending June thirty, eighteen hundred and seventy-nine:

Now, therefore, the said Flint and Pere Marquette Railroad Company, as contractor, and the said Jesse Hoyt and Samuel N. Hoyt, as sureties, do, jointly and severally, undertake, covenant, and agree with the United States, and do bind themselves—

1st. That the mail (including British, Canada, and other foreign mails) shall be conveyed in a secure and safe manner, free from wet or other injury, in a separate and convenient car, or apartment of a car, suitably fitted up, furnished, warmed, and lighted, under direction of the Post Office Department, and to the satisfaction of the Postmaster General, or of his authorized agent, at the expense of the contractor, for the assorting and safe-keeping of the mails,
7 and for the exclusive use of the Department and its mail agent, if the Department shall employ such agent; and such agent is to be conveyed free of charge. When there is no agent of the Department, the railroad company shall designate a suitable person, on each train, to be sworn, to receive and take charge of the mails, and of way-bills accompanying and describing them, and duly deliver the same. And the mail shall be taken from and delivered into the post offices at the ends of the route; and also from and into the intermediate offices on the route, or that may hereafter be established on the route, provided the latter are not over one-quarter of a mile from a depot or station, or from the railroad track when no station has been established.

2d. That if the company shall run a regular train of passenger cars more frequently than is required by the contract to carry the mail, the same increased frequency shall be given to the mail, and without increase of compensation, and the like as to the increase speed of the mail trains, if desired by the Postmaster General.

3d. That the company shall convey, free of charge, all mail bags and post office blanks; and also all accredited special agents of the Department, on exhibition of their credentials.

4th. That the company shall not, by itself, nor by its agents, transmit, nor be concerned in transmitting, commercial intelligence more rapidly than by mail, nor carry out of the mail any letters

not inclosed in postage-stamped envelopes, except such as may have relation solely to some article at the same time conveyed.

5th. That in every case of failure to perform the trip (unless it is shown that the same was not caused by misconduct, neglect, or want of proper skill) there may be a forfeiture of the pay for the trip; and a failure to arrive at the end of the route, so as to lose the connection with a depending mail, shall be considered as
8 equal to a whole trip lost, unless the detention or delay be the result of unavoidable causes.

6th. That the company shall be subject to fine for failure to take or deliver a mail, or any part of a mail, for suffering the mail to be wet or otherwise injured, or lost, or destroyed, unless it shall appear that such failure, or other incident, as aforesaid, was not caused by misconduct, neglect, nor want of proper skill on the part of the company or its officers.

7th. That the company shall be answerable for the adequacy of the means of transportation; for the faithfulness, ability, and diligence of its agents; and for the safety, due receipt, and delivery, as aforesaid, of the mails.

8th. That the company will collect quarterly, if required by the Postmaster General, of postmasters on the route, the balances due from them to the United States on their quarterly returns, and faithfully render an account thereof to the Postmaster General in the settlement of its quarterly accounts, and will pay over to the Auditor of the Treasury for the Post Office Department, on the order of the Postmaster General, all balances remaining in its hands.

9th. That the Postmaster General may discontinue or curtail the service, in whole or in part, whenever the public interests, in his judgment, shall require such discontinuance or curtailment for any cause; he allowing, as a full indemnity to the contractor, one month's extra pay on the amount of service dispensed with, and a *pro rata* compensation for the amount of service retained and continued.

10th. The said United States covenants with the said company to pay, as aforesaid, at the rate aforementioned, quarterly, in the months of November, February, May, and August, or in the preceding months, at the option of the Department.

9 Provided always, That this contract shall, in all its parts, be subject to the terms and requisitions of an act of Congress passed the twenty-first day of April, in the year one thousand eight hundred and eight, entitled "An act concerning public contracts."

In witness whereof, the said Postmaster General has caused the seal of the Post Office Department to be hereto affixed, and has attested the same by his signature; and the said railroad company by its president and sureties, have hereunto set their hands and seals the day and year set opposite their names, respectively.

Signed, sealed, and delivered by the Postmaster General in the presence of—

J. N. DORRIS.

J. W. MARSHALL,
Acting Postmaster General.

And by the other parties hereto in the presence of—
JAS. W. JACKSON,
WM. H. SMITH,
Witnesses.

FLINT AND PERE MARQUETTE
RAILROAD COMPANY.

Signed this 8th day of Dec., 1875, by
JESSE HOYT, *Pres't.*
(Affix seal of Co.)

The officer who signs for the company should add his title on the line below.

Signed this 15th day of Dec., 1875.
Signed this 15th day of Dec., 1875.

JESSE HOYT, [SEAL.]
SAMUEL N. HOYT, [SEAL.]
Sureties

POST OFFICE, NEW YORK, N. Y., *December 16th*, 1875.

I hereby certify that Jesse Hoyt and Samuel Hoyt are good and sufficient sureties for the amount of the foregoing contract.

THOMAS L. JAMES,
Postmaster.

10 II. *Traverse. Filed March* 14, 1881.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations and asks judgment accordingly.

THOMAS SIMONS,
Assistant Attorney General.

11 III. *Findings of Facts and Conclusion of Law. Filed April* 23, 1883.

This case having been heard before the Court of Claims, the court upon the evidence finds the facts to be as follows:

I.

On the 11th September, 1875, the Flint and Pere Marquette Railway Company, which was then a corporation created under the laws of the State of Michigan, and owning and operating a certain railroad within the limits of said State, entered into the following contract, in writing, with the Post Office Department.

Contract for Railroad and Mail Service.

No. 24015. $25,758.04 per annum.

This article of contract, made the 11th day of September, in the year one thousand eight hundred and seventy-five, between the United States of America (acting in this behalf by the Postmaster General) and the Flint and Père Marquette Railroad Company, by Jesse Hoyt, its president, and Jesse Hoyt and Samuel N. Hoyt, as sureties, witnesseth:

That whereas the said railroad company has been accepted according to law as contractor for conveying the mail on route No. 24015 from Monroe, Mich., by Grafton, Carleton, Waltz, Belden, New Boston, Romulus, Wayne, Plymouth, Mead's Mills, Northville, Novi, Wixom, Milford, Highland Station, Clyde, Holly, Stony Run, South Grand Blanc, Grand Blanc, Flint, Mount Morris, Clio, County Line, Birch Run, Blackmar, Bridgeport Centre, East Saginaw, Jay, Smithville (n. o.), Midland, Averill's Station, Sanford (n. o.), Bradley, Coleman, Loomis, Clare, Farewell, Sears, Evart, Hersey, Reed City, Chase, Summitville, Mivona, Forman, Baldwin, Welden Creek, Ferryville, and Amber, to Ludington and back, by railroad, 12 times a week, and six additional times a week outward to Holly, 24 times a week and six additional times a week outward thence to East Saginaw, and 6 times a week the residue, and on branch from Otter Lake Junction (n. o.), by Genesee Village, Rogersville, and Otisville to Otter Lake, and back, by railroad, 6 times a week, and on branch from East Saginaw, by Portsmouth, to Bay City and back, by railroad, 24 times a week, and six additional times a week outward, or as much oftener as trains may run, by a schedule satisfactory to the Department, at twenty-five thousand seven hundred and fifty-eight and four one-hundredths dollars per year (being at the rate of $96 per annum on main line, $40 per mile per annum on 1st branch, and $60 per mile per annum on 2d branch), for and during the term beginning July first, eighteen hundred and seventy-five, and ending June thirty, eighteen hundred and seventy-nine:

Now, therefore, the said Flint and Père Marquette Railroad Company, as contractor, and the said Jesse Hoyt and Samuel N. Hoyt, as sureties, do jointly and severally, undertake, covenant, and agree with the United States, and do bind themselves—

1st. That the mail (including British, Canada, and other foreign mails) shall be conveyed in a secure and safe manner, free from wet or other injury, in a separate and convenient car, or apartment of a car, suitably fitted up, furnished, warmed, and lighted, under direction of the Post Office Department, and to the satisfaction of the Postmaster General, or of his authorized agent, at the expense of the contractor, for the assorting and safe-keeping of the mails, and for the exclusive use of the Department and its mail agent, if the Department shall employ such agent; and such agent is to be conveyed free of charge. When there is no agent of the Department, the railroad company shall designate a suitable person on each
12 train, to be sworn, to receive and take charge of the mails, and of way-bills accompanying and describing them, and

duly deliver the same. And the mail shall be taken from and delivered into the post offices at the end of the route; and also from and into the intermediate offices on the route, or that may hereafter be established on the route, provided the latter are not over one-quarter of a mile from a depot or station, or from the railroad track when no station has been established.

2d. That if the company shall run a regular train of passenger cars more frequently than is required by the contract to carry the mail, the same increased frequency shall be given to the mail, and without increase of compensation, and the like as to the increase speed of the mail trains, if desired by the Postmaster General.

3d. That the company shall convey, free of charge, all mail-bags and post-office blanks, and also all accredited special agents of the Department, on exhibition of their credentials.

4th. That the company shall not, by itself nor by its agents, transmit, nor be concerned in transmitting, commercial intelligence more rapidly than by mail, nor carry out of the mail any letters not inclosed in postage-stamped envelopes, except such as may have relation solely to some article at the same time conveyed.

5th. That in every case of failure to perform the trip (unless it is shown that the same was not caused by misconduct, neglect, or want of proper skill) there may be a forfeiture of the pay for the trip; and a failure to arrive at the end of the route, so as to lose the connection with a depending mail, shall be considered as equal to a whole trip lost, unless the detention or delay be the result of unavoidable causes.

6th. That the company shall be subject to fine for failure to take or deliver a mail, or any part of a mail; for suffering the mail to be wet or otherwise injured, or lost or destroyed, unless it shall appear that such failure or other incident as aforesaid was not caused by misconduct, neglect, or want of proper skill on the part of the company or its officers.

7th. That the company shall be answerable for the adequacy of the means of transportation, for the faithfulness, ability, and diligence of its agents, and for the safety, due receipt, and delivery as aforesaid of the mails.

8th. That the company will collect quarterly, if required by the Postmaster General, of postmasters on the route, the balances due from them to the United States on their quarterly returns, and faithfully render an account thereof to the Postmaster General in the settlement of its quarterly accounts, and will pay over to the Auditor of the Treasury for the Post Office Department, on the order of the Postmaster General, all balances remaining in its hands.

9th. That the Postmaster General may discontinue or curtail the service, in whole, or in part, whenever the public interest, in his judgment, shall require such discontinuance or curtailment for any cause, he allowing, as a full indemity to the contractor, one month's extra pay on the amount of service dispensed with, and a *pro rata* compensation for the amount of service retained and continued.

10th. The said United States covenant with the said company to pay as aforesaid, at the rate aforementioned, quarterly, in the months

of November, February, May, and August, or in the preceding months, at the option of the Department.

Provided, always, that this contract shall, in all its parts, be subject to the terms and requisitions of an act of Congress passed the twenty-first day of April, in the year one thousand eight hundred and eight, entitled "An act concerning public contracts."

In witness whereof the said Postmaster General has caused the seal of the Post Office Department to be hereto affixed, and has attested the same by his signature; and the said railroad company, by its president and sureties, have hereunto set their hands and seals the day and year set opposite their names, respectively.

Signed, sealed, and delivered by the Postmaster General in the presence of—

J. N. DORRIS.

J. W. MARSHALL,
Acting Postmaster General.

And by the other parties hereto in the presence of—

JAS. W. JACKSON,
WM. H. SMITH,
Witnesses.

Flint and Père Marquette Railroad Company.

Signed this 8th day of Dec., 1875, by—

JESSE HOYT, *Pres't.* [AFFIX SEAL OF CO.]

Signed this 15th day of Dec., 1875.

Signed this 15th day of Dec., 1875.

JESSE HOYT, [SEAL.]
SAMUEL N. HOYT, [SEAL.]
Sureties.

13 II.

The said Flint and Père Marquette Railway Company performed the service as required by the contract during its entire term.

III.

The following circulars were sent on the days of their respective dates by the Second Assistant Postmaster General to the proper officers of the Flint and Père Marquette Railway Company:

A.

[Circular.]

Reduction of Pay for Mail Service on Land-Grant Railroads, under Act of Congress of July 12, 1876.

POST OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASS'T POSTMASTER GEN'L,
WASHINGTON, D. C., *Oct.* 20, 1876.

SIR: The act of Congress, entitled "An act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-seven, and for

other purposes," approved July 12, 1876, section 1, contains the following proviso, namely:

"*Provided*, That the Postmaster General be, and he is hereby, authorized and directed to readjust the compensation to be paid from and after the first of July, eighteen hundred and seventy-six, for transportation of mails on railroad routes by reducing the compensation to all railroad companies for the transportation of mails ten per centum per annum from the rates fixed and allowed by the first section of an act entitled 'An act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-four, and for other purposes,' approved March third, eighteen hundred and seventy-three, for the transportation of mails on the basis of the average weight."

The same act also contains the following section:

"SEC. 13. That railroad companies whose railroad was constructed in whole or in part by a land grant made by Congress on the condition that the mails should be transported over their road at such price as Congress should by law direct, shall receive only eighty per centum of the compensation authorized by this act."

Consequently, for mail service performed on and after July 1, 1876, on your road, route 24015, between Monroe and Ludington, and on branches, the compensation will be reduced from $25,758.04 per annum (the amount warranted by the latest returns under the act of March 3, 1873) to $20,875.67 per annum, the reduction amounting to $4,882.37 per annum, which is due to the thirteenth section of the act of July 12, 1876, above quoted.

Very respectfully,

THOS. J. BRADY,
Second Ass't Postmaster General.

To H. C. POTTER, ESQ.,
Gen'l Mang. Flint & Père Marquette R. R., East Saginaw, Mich.

B.

POST OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER GENERAL,
RAILWAY ADJUSTMENT DIVISION,
WASHINGTON, D. C., *Nov. 16th*, 1876.

SIR: Your favor of the 30th ultimo has been received, and the advice of the law office of the Department is requested, in a letter of this date, upon the proposition you submit as to confining
14 the reduction of pay under the 13th section of the act of July 12, 1876, to that portion of your road between Flint and Ludington, instead of applying it to the whole route No. 24015, between Monroe and Ludington. On receipt of his answer any further action which may appear necessary will be taken, of which due notice will be given to your company.

Very respectfully,

THOS. J. BRADY,
Second Ass't P. M. Gen'l.

G. W. LEDLIE, ESQ.,
Auditor Flint & Père Marquette R'w'y, East Saginaw, Mich.

C.

[Heading omitted.]

MARCH 31, 1877.

SIR: No reduction of pay for mail service having been made on the land-grant portion of route No. 24015 (Flint to Ludington) under the first section of the act of Congress of July 12, 1876, in accordance with the advice of the law officer of the Department, the order of Dec. 29, 1876, is rescinded, and the order of Dec. 4, 1876, modified, so as to fix the pay of the Flint and Père Marquette R. R. Company on said route from July 1, 1876, as follows:

From Monroe to Flint, 83.12 miles, $96 per mile.
From Flint to Ludington (land grant), 171.17 miles, $69 per mile.
Branch 1, 14.53 miles, $40 per mile.
Branch 2, 12.75 miles, $60 per mile.
Making the total annual pay, $21,156.99.

Very respectfully, &c.,

THOS. J. BRADY,
Second Ass't P. M. General.

HENRY C. POTTER, Esq.,
Gen'l Manager Père Marquette R. R. R. Co., East Saginaw, Mich.

D.

POST OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER GENERAL,
RAILWAY ADJUSTMENT DIVISION,
WASHINGTON, D. C., *April* 11, 1877.

SIR: In reply to yours of the 17th instant, protesting against the reductions which have been made in the compensation on that portion of your road endowed with a grant of land, viz., between Flint and Ludington, because of the existence of a contract, I have to say that a similar case having been presented it was referred by this office to the Assistant Attorney General, who advises that "notwithstanding a land-grant railroad company may perform the service performed by it under a contract with the Government, it is still subject to the deduction from its compensation directed to be made under the provisions of the act of July 12, 1876."

Very respectfully,

THOS. J. BRADY,
Second Ass't P. M. Gen'l.

H. C. POTTER, Esq.,
Gen'l Mang. Flint and Père Marquette R'w'y Co., East Saginaw, Mich.

E.

(No. 34.)

[Circular.]

Readjustment off pay for Mail Service on Railroad Routes, under Act of Congress of June 17, 1878.

POST OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASS'T POSTMASTER GENERAL,
WASHINGTON, D. C., *July* 27, 1878.

SIR: The act of Congress making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and for other purposes, approved June 17, 1878, contains the following proviso, namely:

"That the Postmaster General be, and he is hereby, authorized and directed to readjust the compensation to be paid from and after the first day of July, eighteen hundred and seventy-eight, for transportation of mails on railroad routes by reducing the compensation to all railroad companies for the transportation of mails five per centum per annum from the rates for the transportation of mails on the basis of the average weight fixed and allowed by the first section of an act entitled 'An act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-seven, and for other purposes,' approved July twelfth, eighteen hundred and seventy-six."

Therefore, please take notice that the Auditor of Treasury for this Department has been directed to decrease the pay of your company for the conveyance of the mails on route 24015, between Monroe and Ludington, and branches, from July 1, 1878, to June 30, 1879, $591.56 per annum, leaving the pay from the first-named date $20,565.43 per annum, being a reduction of five per centum from the rates fixed for weight of mails, in accordance with the provision of the act of June 17, 1878, above quoted.

Very respectfully, your obedient servant,

THOS. J. BRADY,
Second Ass't Postmaster General.

To H. C. POTTER,
Gen'l Mang. Flint and Père Marquette R. R., East Saginaw, Mich.

IV.

The said company was paid the contract price for carrying the mails, except that the following deductions were made therefrom: From July 1, 1876, to June 30, 1879, under act of July 12, 1876, $13,803.15; from July 1, 1878, to June 30, 1879, under act of June 17, 1878, $591.56; total $14,394.17. The said sum of $14,394.17 has never been paid by the defendants.

V.

On the 1st day of June, 1872, the Flint and Père Marquette Railway Company executed and delivered to Crapo, Pierce, and Rogers, trustees, a trust deed upon the railway and property of the company to secure the payment of certain bonded indebtedness, said trust deed being known as the consolidated trust deed, and the bonds therein mentioned being known as the consolidated bonds, sometimes called the consolidated sinking fund bonds. The said trustees filed their original bill against the said railway company on the 27 day of June, A. D. 1879, in the circuit court of the United States for the eastern district of Michigan, praying for the appointment of a receiver to take charge of said road and property conveyed by said deed, and to enforce the provisions of said deed, and a receiver was thereupon appointed.

VI.

On the 21st day of August, A. D. 1879, the said railway company executed a supplemental trust deed to the same trustees, the granting part of which is as follows:

Whereof is hereby acknowledged, has granted, bargained, sold, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, remise, release, convey, assign, transfer, and confirm, unto the said parties of the second part, and to the survivor or survivors of them, his or their successor or successors, and to his or their assigns forever, as joint tenants, and not as tenants in common, in trust as hereinafter expressed, all and singular the property of the said party of the first part hereto of every name and nature, including all its real estate within the State of Michigan, and all its personal estate wheresoever the same may be situate; also including all choses in action and all claims and demands whatsoever, and also all claims against the State or against the United States, and all claim against any department of either the State of Michigan
16 or of the United States, and also all equitable rights and remedies, and all equitable claims and demands whatsoever against all and every person or persons whomsoever, including incorporeal rights, property, and franchises from whatever source derived or obtained, and all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, or that may hereafter thereto belong or appertain.

* * * * * * *

Except as shown by said supplemental deed, it does not appear that any claims against the United States or against any Department of the United States were embraced in any deed or conveyance to said trustees.

VII.

A supplemental suit was commenced in the circuit court of the United States for the eastern district of Michigan against said railway company for the foreclosure of the supplemental trust deed, and a decree was had in said suits, of which the following are extracts:

First. That the said Flint and Père Marquette Railway Company has made default in the performance of the agreements contained in the consolidated trust deed mentioned in the pleadings, and that said the trustees in said consolidated trust deed (being the complainants, Crapo, Pierce, and Rodgers) are entitled to the aid of this court in the premises, and to have the said railroad as consolidated, as stated in said bill, sold, with all its property, rights, franchises, and privileges, including things in action and equitable rights of every name and nature, subject to the prior claims in the pleadings mentioned.

* * * * * *

Fifth. That the said defendant pay to said complainants, Crapo, Pierce, and Rogers, the sum of one million seven hundred and sixty-six thousand three hundred sixty-eight and $\frac{80}{100}$ dollars, with interest thereon from May 1st, 1880, together with the taxable costs in this cause, and shall also pay the amount in default for sinking fund, as provided in said consolidated trust deed, on or before the 27th day of June, in the year of our Lord one thousand eight hundred and eighty; and in default thereof, the said railroad of the said defendant, constituting its entire line of railway in the State of Michigan, and all and singular the depot buildings, engine-houses, and other buildings and improvements and constructions thereon, and also all and singular the rails and superstructure of said road, and all and singular the locomotives, engines, and rolling-stock of every kind and description, as well as the tools, materials, implements, utensils, and other personal property which may have been procured for and used upon the said railway; and also all and singular the rights, privileges, franchises, tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and all and singular the property of the said Flint and Père Marquette Railway Company of every name and nature, including all its real estate within the State of Michigan, and all its personal estate, wheresoever the same may be situate, and also all choses in action, and all claims and demands whatsoever against any person or persons or corporation, or against the State or the United States; and also all equitable rights and remedies, and all claims and demands whatsoever, whether at law or equity, against all and every person or persons whomsoever, including incorporeal rights, property, and franchises from whatever source derived or obtained, and all hereditaments and appurtenances thereunto belonging or in anywise appertaining, shall be sold by or under the direction of Henry M. Campbell, a master in chancery of this court, who is hereby appointed a special master commissioner for that purpose; provided that there shall be excepted from said sale the lands included in the land grant made by the United States and the State of Michigan to aid in the construction of the said Flint and Père Marquette railway, and also excepting from said sale moneys due or to grow due or heretofore collected from the sale of lands or timber from the lands embraced in said land grant; but such sale shall include the right to call land-grant trustees to account, as herein otherwise provided. That such sale shall be made at the front door of the gen-

eral offices of the Flint and Père Marquette Railway Company, in the city of East Saginaw, in the State of Michigan, at any time after the said 27th day of June, in the year of our Lord one thousand eight hundred and eighty. That the said special master commissioner shall give notice, according to the course and practice of this court, of the time and place of such sale. That such notice shall be published at least once in each week for not less than six successive weeks in the Detroit Post and Tribune, a newspaper published in the city of Detroit; and also in the Saginaw Courier, a newspaper published in East Saginaw, in the State of Michigan; and at such sale the complainants or any of the parties to this suit, or interested therein, may become the purchaser.

* * * * * * *

17 Ninth. Forthwith, after the confirmation of said sale, the said special master commissioner shall execute and deliver to the purchaser or purchasers, or his or their assigns, a deed of the property so sold, describing the same as in this decree, which deed shall refer to this decree, and shall state that the purchaser takes the property subject to all prior liens, claims, and rights as in this decree and in said order of confirmation stated, and thereupon the purchaser or purchasers, his or their assigns, shall be let into possession of the property so purchased; and the receiver is hereby directed, upon production of a certified copy of the order confirming the report of sale, together with the deed of the special master commissioner as aforesaid, to deliver and transfer possession of the said railroad and all the property embraced in said deed, so far as the same is in his custody and control, to the grantee or grantees named in such deed; but such grantee or grantees shall take such property and the possession thereof subject to an adjustment and satisfaction of all the accounts of the receiver, and all debts created by him which have been or may be approved by the court. All further directions are hereby reserved, and any of the parties to be at liberty to apply to the court as they may be advised.

VIII.

The said property was thereupon, on the 18th day of August, 1880, sold in pursuance of the decree, and purchased by Henry A. V. Post and others, as a committee in trust for the holders of bonds, pursuant to a scheme for reorganization before then agreed upon. And thereupon said committee so purchasing, with their associates, organized the claimant company to take charge of, manage, and operate the railroad and property sold. And thereupon a deed of conveyance was made of the said property directly to the claimant by order of the court.

The following is a copy of the order of the court under which the said deed was made to the claimants:

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room, in the city of Detroit, on Tuesday, the

twenty-first day of September, in the year one thousand eight hundred and eighty.

Present: Honorable Henry B. Brown, district judge.

Original and Supplemental Bills.

OLIVER PRESCOTT, WILLIAM W. CRAPO, ANDREW G. PIERCE, and PUBLIUS V. ROGERS, Trustees, Complainants,
vs.
THE FLINT & PÈRE MARQUETTE RAILWAY COMPANY, Defendant.
2550. In Equity.

In this cause, on reading and filing the report of Henry M. Campbell, master in chancery, and special master commissioner, appointed by the decree heretofore made in this cause to make the sale of the property therein mentioned, from which it appears that the property directed to be sold by said decree was sold on the 18th day of August, 1880, and that Henry A. V. Post, Loum Snow, Jr., Francis Hathaway, Henry H. Fish, and Abram G. Brower became the purchasers, they being the highest bidders therefor, and purchasing as a committee in trust for the holders of bonds, pursuant to a scheme for reorganization before then agreed upon, and that said purchasers had paid to the said special master commissioner the amount bid at such sale; on motion of W. L. Webber, solicitor for the complainants, it is ordered that the said sale and said report and all things therein contained be, and they are hereby, ratified and confirmed.

And on reading and filing the petition of said purchasers at said sale, from which it appears that such purchasers, pursuant to the scheme for reorganization aforesaid, have associated with themselves the persons named in said petition, and that said purchasers and their said associates have organized a corporation by the name of the Flint and Père Marquette Railroad Company, to take charge of, manage, and operate the railroad and property sold pursuant to said decree and purchased as aforesaid, said petition praying that the said special master commissioner may make a deed upon said sale direct to the said corporation thus formed for the purpose aforesaid:

On like motion, it is ordered that the said special master commissioner make a deed and conveyance of the property sold by him under such decree, and purchased as aforesaid, as prayed in said petition, such deed to run to the said Flint and Père Marquette Railroad Company, the corporation organized by the said purchasers and their associates as aforesaid, and such deed shall refer to the decree under which the sale was made, and shall state that the grantee therein named takes the property subject to the incumbrances, terms, and conditions mentioned in said decree and in this order.

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And, on like motion, it is further ordered that it be referred to Henry M. Campbell, a master of this court, to inquire and report the compensation which should be awarded, for their services in this cause, to the receiver, and to the counsel engaged therein, and also

what compensation should be awarded to the trustees, said Crapo, Pierce, and Rogers, for their services as such, and that the master report thereon, with his opinion.

It is further ordered that Henry C. Potter, the receiver appointed in this cause, render his account as such receiver, made up and computed to the close of the month of September instant, and that said receiver surrender and deliver possession of the property embraced in the master's deed, to be given, as hereinbefore mentioned, to the said Flint and Père Marquette Railroad Company, on the first day of October proximo, at the beginning of said day, the said company to take the same and hold subject to the payment of such sums for the debts created by the receiver, and for expenses connected with or growing out of this suit, as the court shall order.

It is further ordered that the said Henry M. Campbell, special master commissioner, deliver all of the bonds and coupons which were paid into his hands by the purchasers under said sale, and which are now on deposit at the Merchants' National Bank, as stated in said report, to the said Crapo, Pierce, and Rogers, trustees, or to their solicitor, that the same may be cancelled, and that the money which was paid by such purchasers on said sale, and which is now on deposit in the said bank, as stated in said report, shall continue on deposit as aforesaid, subject to the order of this court.

It is further ordered that any of the parties be at liberty to apply for further directions, as they may be advised, and that the said Henry M. Campbell, master as aforesaid, make report concerning the matters hereinbefore referred to him with all convenient peed.

HENRY B. BROWN,
District Judge.

Conclusion of Law.

On the foregoing facts the court decides, as conclusion of law, for the reasons stated in the opinion, that the claimants' petition must be dismissed.

IV. *Opinion of the Court.*

DAVIS, J., delivered the opinion of the court.

The Flint and Père Marquette Railway Company, on the 11th September, 1875, entered into a contract with the Postmaster General for transmitting the mails for a term of four years, with conditions similar in all respects to those in the contract with the Lake Superior and Mississippi Railroad Company, referred to in the opinion just read in the case of the Saint Paul and Duluth Railroad Company.

After the passage of the acts of July 12, 1876, 19 Stat. L., 79, and June 17, 1878, 20 Stat. L., 140, reductions were made in the pay for the service, in conformity with the provisions of those statutes, respectively. The whole amount of such reduction was $14,394.17.

On the 21st day of August, 1879, after the whole service had been rendered, the Flint and Père Marquette Railway Company was in default on its mortgage bonds, and a suit had been commenced for the foreclosure of the mortgage, and a receiver had been appointed in that suit. On that date the company executed a supplemental

deed to the trustees under the original mortgage, by which was conveyed, among other things:

All claims against the State or against the United States, and all claims against any department of either the State of Michigan or of the United States.

The decree of foreclosure directed the sale of the property covered by the original mortgage and the property covered by the
19 supplemental mortgage. The purchase at the sale was made by trustees on behalf of the bondholders, by whom a new company was organized under the law of the State of Michigan, which was called the Flint and Père Marquette Railroad Company, instead of the Flint and Père Marquette Railway Company. This company was recognized by the court, and the deed was, by order of the court, made directly to the new company, instead of to the trustees who had purchased on their behalf. The claimant is that company, and claims as assignee of the old company under that deed.

These facts do not appear to differ in any essential respect from those in the first branch of the case of the St. Paul and Duluth Railroad Company, just passed upon. The three judges who heard this case are divided here as they were there, and the same reasons which led them then to enter judgment for the defendant on the first branch of that case induces them here to order the entry of—

Judgment.—That the claimants' petition be dismissed.

Drake, C. J., was absent when this cause was heard, and takes no part in the decision.

V. *Final Judgment of the Court.*

At a Court of Claims held in the city of Washington on the 23d day of April, A. D. 1883, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the defendants, and do order, adjudge, and decree, that the petition of the claimant, The Flint and Père Marquette Railroad Company, be dismissed.

20 VI. *Application of Claimant for and Allowance of Appeal.*

And now comes the said claimant in the above-entitled cause, by J. F. Farnsworth, its attorney, and prays an appeal from the judgment of said court to the Supreme Court of the United States.

J. F. FARNSWORTH,
Attorney for Claimant.

Filed June 15, 1883.

AT CHAMBERS, *June* 15, 1883.

Allowed.

C. D. DRAKE,
Chief Justice.

21 In the Court of Claims.

THE FLINT AND PÈRE MARQUETTE RAILROAD COMPANY
vs.
THE UNITED STATES. } No. 12404.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application of the claimant for the allowance of appeal to the Supreme Court of the United States, and of the allowance of said appeal by Chief Justice Drake.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this twentieth day of June, A. D. 1883.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: Court of Claims. No. 521. The Flint and Père Marquette Railway Company, appellant, *vs.* The United States. Filed 20th June, 1883.

112-137

Office Supreme Court U. S.
FILED.
OCT 20 1884
JAMES H. McKENNEY.
CLERK.

Supreme Court of the United States.

THE FLINT AND PERE MARQUETTE RAILROAD COMPANY, *Appellant*,
versus
THE UNITED STATES.

October Term, 1884.
No. 521.

APPEAL FROM COURT OF CLAIMS.

BRIEF FOR APPELLANT.

The facts in this case are substantially like those in the case of the "Saint Paul and Duluth Railroad Company," with the exception that the contracting company performed all the service required by the contract, and the deed of trust which had been executed by it was not foreclosed until after the termination of the contract term.

The name of the contracting company was the "Flint and Pere Marquette Rail*way*," and upon the foreclosure the railway franchises and every description of its property was transferred to the reorganized company, the Corporation plaintiff.

ASSIGNMENT OF ERRORS.

The appellant assigns for error, that the Court below should have rendered judgment in favor of the claimant for the sum of $14,394.71.

This case was heard in the Court of Claims by three only of the judges of that court, one of whom was unable to agree with the other two that the plaintiff should recover; and, as the statute requires the concurring of three judges in that court to render judgment for a plaintiff, the appellant was obliged to bring the case to this Honorable Court.

It is not supposed that the Attorney General will seriously question the right of the plaintiff to recover the amount illegally deducted by the Post Office Department from the contract in this case.

J. F. FARNSWORTH,
Counsel for Appellant.

112-737

Office Supreme Court U. S.
FILED.
DEC 5 1884
JAMES H. McKENNEY.
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

THE FLINT, &c., RAILROAD Company
v.
THE UNITED STATES. } No. 521.

BRIEF FOR THE UNITED STATES.

This case is submitted, repeating the remarks made in the brief, &c., for the case No. 520.

S. F. PHILLIPS,
Solicitor-General.